

SPOUSES RODELIO AND ALICIA POLTAN, PETITIONERS, VS. BPI FAMILY SAVINGS BANK, INC. AND JOHN DOE, RESPONDENTS.*G.R. No. 164307. March 05, 2007*

Ponente: CHICO-NAZARIO, J.

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In a Complaint docketed as Civil Case No. 94-70655 for replevin and damages filed with the Regional Trial Court (RTC) of Manila, Branch XVIII, by respondent BPI Family Savings Bank, Inc. (BPI) against petitioners Rodelio and Alicia Poltan, BPI alleged that on 11 November 1991, the petitioners obtained a loan evidenced by a promissory note[1] from Mantrade Development Corporation (Mantrade) secured by a chattel mortgage[2] over a 1-unit Nissan Sentra Motor Vehicle, more particularly described as follows:

ONE (1) N. SENTRA 1400 4-DOOR SED. IX

MODEL: 1991 with Aircon, Stereo & Magwheels

MOTOR NO.: GA14-440327B**SERIAL NO.: BCAB13-A37402****COLOR: PLATINUM GREEN**

On 11 November 1991, Mantrade, with notice to the petitioners, assigned to BPI, by way of a Deed of Assignment,[3] all its rights, title and interest to the promissory note and chattel mortgage. The petitioners defaulted in complying with the terms and conditions of the promissory note and chattel mortgage when they failed to pay five consecutive monthly installments which fell due on 15 January 1994 up to 15 May 1994. BPI demanded[4] from the petitioners the whole balance of the promissory note in the amount of P286,540.06, including accrued interest, or to return to BPI the possession of the motor vehicle for the purpose of foreclosure in accordance with the undertaking stated in the chattel mortgage. Petitioners failed and refused to heed said demand. It is specifically provided in the promissory note and chattel mortgage that failure to pay any installment when due shall make the subsequent installments and the entire balance of the obligation due and payable.[5] BPI, in its complaint, further prayed for the award of attorney's fees, liquidated damages and other expenses incurred in connection with the petitioners' failure to pay their balance on the loan.

In their Answer to the Complaint,[6] the petitioners did not deny that they purchased the vehicle from Mantrade on installment and the same loan was subsequently assigned to BPI. They disclosed that BPI required them to obtain a motor vehicle insurance policy from FGU Insurance Corporation (FGU Insurance). They had been religiously paying the monthly installments on the vehicle until it figured in an accident where it became a total wreck. Under the terms of the insurance policy from FGU Insurance, the vehicle had to be replaced or its value paid to them. Due to the failure and refusal of FGU Insurance to replace the vehicle or pay its value, the

petitioners stopped the payment of the monthly installment.

On the date agreed upon by the parties for the pre-trial of the case, the petitioners failed to appear. Upon motion of BPI, the petitioners were declared as in default and BPI was allowed to present its evidence ex-parte.[7] The petitioners filed a Motion for Reconsideration[8] which the trial court granted in its Order, dated 27 February 1995.[9] When the pre-trial conference was terminated, the trial court set the case for hearing on the merits.[10] BPI then filed a motion for judgment on the pleadings contending that the answer of the petitioners failed to tender an issue and admitted the material allegations in the Complaint.[11] This was opposed by the petitioners who argued that though they did not specifically deny their outstanding obligation, the amount due was in the form of damages that must be proven by competent and admissible evidence.[12]

In a Decision[13] dated 14 June 1995, the trial court granted the Motion for Judgment on the Pleadings filed by BPI and held:

WHEREFORE, judgment is hereby rendered ordering the defendants to pay, jointly and severally, the plaintiff the sum of P286,540.06 with penalty charges thereon for late payment at the rate of 36% per annum from May 28, 1994, until fully paid, and attorney's fees in the sum of P10,000.00, plus the costs of this suit.[14]

The petitioners appealed to the Court of Appeals. In a Decision[15] dated 19 May 1997, the Court of Appeals acted favorably on the appeal of the petitioners, set aside the RTC Decision and remanded the case to the trial court for trial on the merits.

On remand, the schedules of hearing of the case as set by the trial court were postponed for several times. The hearing was finally set on 10 January 2000. Again, petitioners, as well as their counsel, failed to appear despite due notice and without just cause. Thus, BPI was allowed to present its evidence ex-parte on 10 January 2000. The trial court then rendered its Decision on 6 April 2000 and held -

WHEREFORE, judgment is hereby rendered ordering the defendants to pay, jointly and severally, the plaintiff the sum of P286,340.00 with penalty charges thereon for late payment at the rate of 36% per annum from May 20, 1994, until fully paid, and attorney's fees in an amount equivalent to 25% of the sum due, plus the costs of this suit.[16]

Aggrieved by the Decision, petitioners again appealed to the Court of Appeals.[17] In a Decision, dated 30 June 2004, the Court of Appeals denied the appeal and affirmed in toto the Decision of the trial court.[18]

Hence, this Petition filed by the petitioners where they raise the following issues:

- WHETHER OR NOT THE PETITIONERS HAD BEEN UNJUSTLY DEPRIVED BY THE TRIAL COURT A QUO AND THE COURT OF APPEALS OF THEIR CONSTITUTIONAL AND STATUTORY RIGHT TO PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW WHEN THE TRIAL COURT, MOVED BY AN UNFAIR ATTITUDE OF DISCRIMINATION AND UNFAIRNESS, SUDDENLY ALLOWED THE BPI TO PRESENT EVIDENCE EX PARTE ON JANUARY 11, 2000 - THUS, TOTALLY ELIMINATING THE OPPORTUNITY OF THE PETITIONERS POLTAN TO BE HEARD - SIMPLY BECAUSE THEIR FORMER LAWYER ATTY. DOMINGO S. CRUZ, WAS ABSENT DURING THAT PARTICULAR HEARING (JANUARY 10, 2000), DESPITE THE FACT THAT THE TRIAL COURT KNEW FROM THE RECORD THAT ATTY. CRUZ HAD BEEN PRESENT IN THE PAST MANY HEARINGS PRIOR TO JANUARY 10, 2000, WHILE THE COUNSEL FOR RESPONDENT HAD BEEN ABSENT IN FOR MANY HEARINGS PRIOR TO JANUARY 10, 2000;
- WHETHER OR NOT PETITIONERS POLTAN HAD BEEN DEPRIVED OF THEIR CONSTITUTIONAL AND STATUTORY RIGHT TO PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW AS SHOWN BY THE BIASED PATTERN OF BEHAVIOR OF THE PRESIDING JUDGE OF THE TRIAL

COURT SINCE 1995, IN THAT, THE PRESIDING JUDGE IN 1995, WITHOUT ANY VALID BASIS AS SHOWN BY THE (FIRST) 1997 DECISION OF THE COURT OF APPEALS (EXHIBIT "H"), ALLOWED A BASELESS MOTION FOR JUDGMENT ON THE PLEADINGS, THUS, DEPRIVING THE PETITIONERS POLTAN OF THEIR RIGHT TO PRESENT EVIDENCE, FOR THE FIRST TIME; AND IN THAT, THE PRESIDING JUDGE IN 2000, FOR THE SECOND TIME, PRESUMABLY IRKED BY THE 1997 APPELLATE REVERSAL, AGAIN DEPRIVED THE PETITIONERS POLTAN OF THEIR RIGHT TO DUE PROCESS OF LAW BY SUDDENLY ALLOWING THE RESPONDENT TO PRESENT EVIDENCE EX PARTE AND BY ISSUING THE QUESTIONED EX PARTE DECISION, WHICH THE COURT OF APPEALS LATER ERRONEOUSLY AFFIRMED IN ITS QUESTIONED DECISION DATED JUNE 30, 2004;

- WHETHER OR NOT THE PETITIONERS POLTAN HAD BEEN DEPRIVED OF THEIR CONSTITUTIONAL AND STATUTORY RIGHT TO PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW, IN THAT THE UNEXPLAINED GROSS NEGLIGENCE OF THEIR FORMER COUNSEL, ATTY. DOMINGO S. CRUZ, TO APPEAR DURING THE HEARING SET ON JANUARY 10, 2000, DESPITE NOTICE, AND WITHOUT OFFERING AN EXPLANATION TO THE TRIAL COURT OR FILING A MOTION FOR RECONSIDERATION OF THE ORDER, DATED JANUARY 10, 2000, HAD UNJUSTIFIABLY RESULTED IN A GRAVE MISCARRIAGE OF JUSTICE TO THE EXTREME PREJUDICE OF THE PETITIONERS POLTAN, WHO ARE NOW EXPOSED TO THE GREAT AND HIGHLY DETRIMENTAL RISK OF PAYING THE RESPONDENT BPI THE HUGE AMOUNT OF ALMOST TWO MILLION PESOS (P2,000,000.00), IF WE CONSIDER THE TOTALITY AND CURRENT STATUS OF THE JUDGMENT AWARD MADE IN FAVOR OF BPI, WITHOUT AFFORDING THE PETITIONERS POLTAN A FAIR CHANCE AND OPPORTUNITY TO BE HEARD;

- WHETHER OR NOT THE PETITIONERS POLTAN HAD BEEN DEPRIVED OF THEIR CONSTITUTIONAL AND STATUTORY RIGHT TO PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW WHEN THE TRIAL COURT, AS AFFIRMED BY THE COURT OF APPEALS, ALLOWED ON JANUARY 21, 2000 THE FORMER COUNSEL FOR THE RESPONDENT, I.E., THE LABAGUIS LOYOLA FELIPE ATIENZA SANCHEZ LAW OFFICES, WHICH HAD PREVIOUSLY WITHDRAWN AS COUNSEL FOR RESPONDENT, TO PRESENT EVIDENCE, EX PARTE, AND TO MOVE FOR THE REINSTATEMENT OF THE FIRST QUESTIONED DECISION OF TRIAL COURT (SEE ANNEX J TO J-4 OF THE PETITION) FOR AND IN BEHALF OF THE RESPONDENT BPI;

- WHETHER OR NOT THE TRIAL COURT HAD THE LAWFUL JURISDICTION AND THE POWER TO HEAR AND DECIDE THE CASE EX PARTE ON THE BASIS OF THE EVIDENCE PRESENTED BY A LAW OFFICE WHICH HAD PREVIOUSLY WITHDRAWN ITS FORMAL APPEARANCE AND THUS HAD LOST ANY LEGAL ROLE, AUTHORITY, STANDING AND RIGHT TO PARTICIPATE IN THE PROCEEDINGS;

- WHETHER OR NOT THE CONTRACTS PRESENTED IN EVIDENCE, EX PARTE, BY THE RESPONDENT WERE UNJUST AND UNACCEPTABLE CONTRACTS OF ADHESION WHOSE UNCONSCIONABLE TERMS AND CONDITIONS SHOULD BE REJECTED BY THIS HONORABLE COURT, IN THE INTEREST OF EQUITY AND JUSTICE, E.G., THE IMPOSITION OF 36% PENALTY CHARGE PER ANNUM AND 25% ATTORNEY'S FEES, ON THE BASIS ALONE OF A SUDDEN EX PARTE HEARING HELD ON JANUARY 11, 2000;

- WHETHER OR NOT THE TERMS AND CONDITIONS OF THE COMPREHENSIVE CAR INSURANCE POLICY ISSUED BY FGU INSURANCE CORP., WHICH IS A SISTER COMPANY OF THE RESPONDENT CORPORATION, SHOULD BE DEEMED AS HAVING AUTOMATICALLY AND IPSO FACTO OPERATED IN FAVOR OF THE RESPONDENT BPI, AS THE ASSURED MORTGAGEE, AT THE TIME OF THE TOTAL-WRECK ACCIDENT INVOLVING THE CAR, ABOUT WHICH THE INSURER AND THE SAID ASSURED RESPONDENT BPI HAD BEEN DULY NOTIFIED; AND IF SO,

WHETHER SUCH AUTOMATIC OPERATION SHOULD BE DEEMED AS HAVING RESULTED IN THE EXTINGUISHMENT OF THE OBLIGATION OF THE PETITIONERS TO THE RESPONDENT, AS THE ASSURED MORTGAGEE.[19]

The appeal is not meritorious.

The first three issues may be summed up into whether the allowance of the ex-parte presentation of evidence is proper and whether the petitioners were denied due process.

On the issue of validity of presentation of evidence ex-parte, be it noted that upon the remand of the case to the trial court by the Court of Appeals, both BPI and the petitioners were duly notified of the scheduled date of the hearing of the case by the trial court. At the hearing scheduled on 10 January 2000 where the petitioners were absent and where BPI was allowed to present evidence ex-parte, both parties were given notice that the hearing of the case was scheduled on that date. Specifically, the petitioners were notified through their representative Rizaldy Impi of the scheduled hearing on 10 January 2000.[20] This notwithstanding, the petitioners failed to appear. Lest it be forgotten, the case was previously decided based on judgment on the pleadings and the same was elevated to the Court of Appeals which resolved to remand the case to the trial court for further hearing. After the remand of the case, the same was initially set for hearing on 25 January 1999.[21] This was postponed upon motion of the counsel of the petitioners[22] who moved that the same be reset to 22 February 1999 which the trial court granted.[23] The petitioners were again absent on the latter date and they were notified that the hearing was reset to 19 April 1999.[24] The hearing scheduled on 19 April 1999 was again reset to 17 May 1999 upon their motion.[25] Upon agreement of both parties, the hearing scheduled on 17 May 1999 was reset to 5 July 1999.[26] Similarly, both parties again agreed to reset the scheduled hearing of 5 July 1999 to 23 August 1999.[27] Then again, the 23 August 1999 schedule was reset to 11 October 1999, likewise, upon agreement of both parties.[28] All these negate the claim of denial of due process. The petitioners were given more than ample opportunity to be heard through counsel. The claim of denial of due process is clearly without basis. What the fundamental law prohibits is total absence of opportunity to be heard. When a party has been afforded opportunity to present his side, he cannot feign denial of due process.[29]

Admittedly, there was a hearing conducted without the presence of the petitioners on 10 January 2000, and BPI was allowed to present evidence ex-parte. BPI adduced in evidence the following:

EXHIBIT A & B - Promissory Note and Chattel Mortgage

A-1 - Signature of the defendants;

A-3 - Acceleration clause to prove the obligation;

A-4 - Stipulation on Attorney's fees;

C - Deed of Assignment;

D - Demand Letter;

E - Statement of Account to prove the obligation of the defendants as of the time of the filing of this suit.[30]

Relative to the fourth and fifth issues raised by the petitioners on the matter of whether the counsel of BPI had adequate authority to represent BPI at the time of the ex-parte presentation of evidence in view of the earlier withdrawal of the said counsel, while it may be true that the counsel of BPI filed before the trial court a notice of withdrawal of appearance on 27 December 1999,[31] the same was not acted upon by the trial court. Instead, the withdrawal of appearance of BPI's counsel was "approved and noted on 31 January 2000.[32] Therefore, undoubtedly, when the said former counsel of BPI conducted the ex-parte presentation of evidence on 11 January

2000, he still had authority to do so.

Anent the sixth issue relating to the contract signed by the petitioners being in the nature of a contract of adhesion, the accepted rule is that a contract of adhesion is not per se inefficacious.

A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing.[33]

Contracts of adhesion wherein one party imposes a ready-made form of contract on the other are not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.[34] A contract of adhesion is just as binding as ordinary contracts. It is true that this Court had, on occasion, struck down such contracts as being assailable when the weaker party is left with no choice by the dominant bargaining party and is thus completely deprived of the opportunity to bargain effectively. Nevertheless, contracts of adhesion are not prohibited even as the courts remain careful in scrutinizing the factual circumstances underlying each case to determine the respective claims of contending parties on their efficacy.[35]

The petitioners failed to show that they were under duress or forced to sign the loan documents. They were presumed to have signed the assailed documents with full knowledge of their import.

As held in the case of *Lee v. Court of Appeals*,[36] it is presumed that a person takes ordinary care of his concerns.[37] The natural presumption is that one does not sign a document without first informing himself of its contents and consequences. The petitioners obtained a loan evidenced by a promissory note. They admit that they obtained the loan and the due execution of the promissory note. They also admit the due execution of the chattel mortgage and the deed of assignment in favor of BPI.[38]

We also resolve the seventh issue raised by petitioners in the negative. The petitioners failed to show any provision in the insurance policy or mortgage contract providing that the loss of the mortgaged vehicle extinguishes their principal obligation to BPI. Similarly, the petitioners' contention that their obligation had been extinguished because of the provision in the contract that the proceeds of the insurance policy is for the benefit of the mortgagee is, likewise, unacceptable.

As very well expressed by the Court of Appeals, while it is true that the proceeds from the insurance policy over the mortgaged chattel is for the benefit of BPI,[39] this will result in partial or full satisfaction of the obligation only if the insurer pays the mortgagee, BPI, or if the insurance proceeds were paid to BPI. In the case at bar, upon the loss of the vehicle due to total wreck, the petitioners filed a claim under the insurance policy, collected and received the proceeds thereof,[40] but did not settle their obligation with BPI which remained outstanding despite the loss of the vehicle.[41]

Upon the views we have laid, we find that the obligation of the petitioners has been adequately proven, and that it has not been extinguished.

We now hew to the issue of the award of damages.

The trial court, in conformity with the terms of the promissory note, awarded to BPI the amount of P286,340.00 with penalty charges thereon for late payment at the rate of 36% per annum from May 20, 1994, until fully paid, and attorney's fees in an amount equivalent to 25% of the amount due, plus the costs of this suit.[42] This award was affirmed by the Court of Appeals.

In certain cases, a stipulated penalty may be reduced by the courts. This is sanctioned by Article 1229 of the Civil

Code, which states:

Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

Equity dictates that we review the amounts of the award, considering the excessive interest rate and the too onerous penalty and the resulting excessive attorney's fees.[43]

We underscore the pronouncement of this Court in the case of Ruiz v. Court of Appeals[44] regarding interest rates:

We affirm the ruling of the appellate court, striking down as invalid the 10% compounded monthly interest, the 10% surcharge per month stipulated in the promissory notes dated May 23, 1995 and December 1, 1995, and the 1% compounded monthly interest stipulated in the promissory note dated April 21, 1995. The legal rate of interest of 12% per annum shall apply after the maturity dates of the notes until full payment of the entire amount due. Also, the only permissible rate of surcharge is 1% per month, without compounding. We also uphold the award of the appellate court of attorney's fees, the amount of which having been reasonably reduced from the stipulated 25% (in the March 22, 1995 promissory note) and 10% (in the other three promissory notes) of the entire amount due, to a fixed amount of P50,000.00. However, we equitably reduce the 3% per month or 36% per annum interest present in all four (4) promissory notes to 1% per month or 12% per annum interest.

The foregoing rates of interests and surcharges are in accord with Medel vs. Court of Appeals [299 SCRA 481], Garcia vs. Court of Appeals [167 SCRA 815], Bautista vs. Pilar Development Corporation [312 SCRA 611], and the recent case of Spouses Solangon vs. Salazar [G.R. No. 125944, 29 June 2001]. This Court invalidated a stipulated 5.5% per month or 66% per annum interest on a P500,000.00 loan in Medel and a 6% per month or 72% per annum interest on a P60,000.00 loan in Solangon for being excessive, iniquitous, unconscionable and exorbitant. In both cases, we reduced the interest rate to 12% per annum. We held that while the Usury Law has been suspended by Central Bank Circular No. 905, s. 1982, effective on January 1, 1983, and parties to a loan agreement have been given wide latitude to agree on any interest rate, still stipulated interest rates are illegal if they are unconscionable. Nothing in the said circular grants lenders carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. On the other hand, in Bautista vs. Pilar Development Corp., this Court upheld the validity of a 21% per annum interest on a P142,326.43 loan, and in Garcia vs. Court of Appeals, sustained the agreement of the parties to a 24% per annum interest on an P8,649,250.00 loan. It is on the basis of these cases that we reduce the 36% per annum interest to 12%. An interest of 12% per annum is deemed fair and reasonable. While it is true that this Court invalidated a much higher interest rate of 66% per annum in Medel and 72% in Solangon it has sustained the validity of a much lower interest rate of 21% in Bautista and 24% in Garcia. We still find the 36% per annum interest rate in the case at bar to be substantially greater than those upheld by this Court in the two (2) aforesaid cases.

The courts shall reduce equitably liquidated damages,[45] whether intended as an indemnity or a penalty, if they are iniquitous or unconscionable.[46]

The question of whether a penalty is reasonable or iniquitous is addressed to the sound discretion of the courts. To be considered in fixing the amount of penalty are factors such as - but not limited to - the type, extent and purpose of the penalty; the nature of the obligation; the mode of the breach and its consequences; the supervening realities; the standing and relationship of the parties; and the like.[47]

Applying settled jurisprudence in this case, we find that the interest stipulated upon by the parties in the promissory note at the rate of 36% is iniquitous and unconscionable. Consequently, an interest of 12% per annum

and an attorney's fees of P50,000.00 is deemed reasonable.[48]

WHEREFORE, premises considered, the Decision of the Court of Appeals dated 30 June 2004, affirming the Decision of trial court, dated 14 June 1995, is AFFIRMED with the modification that the interest rate be reduced to 12% per annum from 24 May 1994 until fully paid, and the award of attorney's fees be reduced to P50,000.00. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.
Callejo, Sr., J., on leave.

[1] Records, p. 10.

[2] Id. at 12.

[3] Id. at 10.

[4] Id. at 18.

[5] Id. at 10.

[6] Id. at 38.

[7] Id. at 83.

[8] Id. at 88.

[9] The 27 February 1995 order reads:

In the interest of substantial justice, and considering that the plaintiff had failed to present its evidence ex-parte on January 18, 1995, at 10:00 a.m., this Court's order of January 16, 1995, declaring the defendants as in default due to their non-appearance on the scheduled pre-trial of this case, is hereby reconsidered and set aside.

Accordingly, let the pre-trial of this case be set for April 17, 1995, at 9:00 o'clock in the morning and copies of this order furnished the counsels for the parties. In this regard, the counsels for the plaintiff and the defendants are directed to notify their respective clients of the scheduled pre-trial conference. (Id. at 95.)

[10] Id. at 106.

[11] Id. at 88.

[12] Id. at 88 and 127.

[13] Penned by Judge Perfecto A.S Laguio , Jr.

[14] Records, p. 166.

[15] Docketed as CA-G.R. CV No. 50980; penned by then Associate Justice Salome A. Montoya with Associate Justices Eugenio S. Labitoria and Omar U. Amin, concurring; records, p. 226.

[16] Records, p. 275.

[17] Docketed as CA-G.R. CV No. 66950.

[18] Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Salvador J. Valdes and Aurora Santiago-Lagman, concurring.

[19] Rollo, pp. 255-257.

[20] Records, p. 266.

[21] Id. at 232.

[22] Id. at 235.

[23] Id. at 238.

[24] Id. at 241.

[25] Id. at 245.

[26] Id. at 251.

[27] Id. at 256.

[28] Id. at 258.

[29] *Development Bank of the Philippines v. Court of Appeals*, 362 Phil. 1, 13-14 (1999), cited in *Dayrit v. Philippine Bank of Communications*, 435 Phil. 120, 126 (2002).

[30] TSN, 11 January 2000, p. 6.

[31] Records, p. 269.

[32] Id. at 269.

[33] *Philippine Commercial International Bank v. Court of Appeals*, 325 Phil. 588, 597 (1996).

[34] *Ayala Corporation v. Ray Burton Development Corporation*, 355 Phil. 475, 497 (1998).

[35] *Pilipino Telephone Corporation v. Tecson*, G.R. No. 156966, 7 May 2004, 428 SCRA 378, 381.

[36] 426 Phil. 290 (2002).

[37] Section 3(d), Rule 131, Rules of Court.

[38] Records, pp. 106-107.

[39] Rollo, p. 86.

[40] Records, p. 106; Id. at 89.

[41] Rollo. p. 39.

[42] Records, p. 277.

[43] *Permanent Savings and Loan Bank v. Velarde*, G.R. No. 140608, 5 Feb 2007.

[44] 449 Phil. 419, 433-435 (2003).

[45] Art. 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

[46] Article 2227 of the Civil Code of the Philippines provides:

Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

[47] Pryce Corporation v. Philippine Amusement and Gaming Corporation, G.R. No. 157480, 6 May 2005, 458 SCRA 164, 182.

[48] Ruiz v. Court of Appeals, *supra* note 44 at 433.

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